

Balers and other equipment used in recycling operations do not qualify as exempt pursuant to 86 Ill. Adm. Code 130.335. Such equipment does not reduce, prevent, or eliminate air or water pollution or treat or dispose of potentially harmful pollutants. (This is a GIL.)

March 25, 1999

Dear Mr. Johnson:

This letter is in response to your letter dated March 5, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

The AGENCY is in the process of reviewing its position with respect to the sales and use tax treatment of sales and purchases of motor vehicles and machinery and equipment used exclusively and directly in waste reduction and recycling activities.

STATE law provides exemptions from STATE sales and use tax for:

- (1) Motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in conjunction with waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste.
- (2) Waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment

Questions:

Does your state have a similar sales and use tax exemption or income tax credit? _____ Yes _____ No If yes, please provide a copy of your state's law.

Does your state have any rules, regulations, guidelines or court cases which indicate where a waste reduction or recycling process begins and ends? _____ Yes _____ No If yes, please provide a copy of this information.

Does your state have any rules, regulations, guidelines or court cases which give examples of machinery, equipment or processes which do or do not qualify for exemption? _____ Yes _____ No If yes, please provide a copy of this information.

A response to this request within 15 days would be greatly appreciated. You may fax, e-mail or U.S. mail the information to me at the numbers and addresses indicated above. In addition, if you have any questions, please feel free to contact me.

Thank you in advance for your attention to this matter.

The Sales/Excise Tax Section of the Legal Services Office is responding to your sales and use tax questions in narrative form. Under separate cover, the Income Tax Section of the Legal Services Office will respond to your questions that relate to income tax.

There is no exemption under Illinois law specifically for the use of tangible personal property in recycling operations. Please be advised that Section 3 of the Illinois Use Tax Act (35 ILCS 105/3) imposes a tax upon the privilege of using tangible personal property in Illinois purchased at retail from retailers. Retailers incur Retailers' Occupation Tax liability upon their gross receipts from sales of tangible personal property for use in this State. The definition of use generally includes the purchase and utilization of assets and supplies used by persons engaged in recycling operations. Therefore, sales of items used in recycling operations are generally taxable, unless an exemption can be documented.

Illinois has no exemption specifically for machinery or equipment used in waste reduction activities. Illinois does have a pollution control facilities exemption, but its application is limited as described below.

We have enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property." It has been the Department's long-standing position that recycling equipment confers an economic benefit to users and thus does not qualify for the pollution control exemption. The recycling process does not constitute elimination, prevention or reduction of pollution.

In general, machines such as bulldozers or excavators whose primary use is to cover waste at a landfill can qualify for the pollution control facilities exemption. However, other machines or equipment, even though they may be used in a waste processing operation, generally do not qualify for the exemption. For

example, trucks or other vehicles that haul waste do not qualify because their primary purpose is transportation, not pollution control.

Balers and compactors do not qualify for this exemption because they do not prevent or reduce air or water pollution, or treat, modify or dispose of potentially harmful pollutants. The fact that these machines may change or reduce the volume of waste does not constitute the prevention or reduction of air or water pollution.

However, waste compactors or balers sold containing deodorizing devices as necessary component parts may qualify if the air pollution control function of the deodorizing devices allow the machines to be used primarily for the purpose of eliminating, preventing or reducing air pollution. It is important to note that such items cannot qualify for the pollution control exemption if used primarily in recycling process situations because, as noted above, machinery and equipment used in recycling is considered to be used primarily for the economic benefit of the user.

Please be aware there are published Illinois Appellate and Supreme Court decisions on this exemption that can be accessed by standard legal research sources.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz
Associate Counsel

KB:msk
Enc.